

Parliamentary Assembly: Underscoring the Protection of Journalistic Sources

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With the adoption, on 25 January 2011, of its Recommendation 1950 (2011) entitled “The protection of journalists’ sources”, the Parliamentary Assembly of the Council of Europe (PACE) has revisited a recurrent theme in its texts focusing on freedom of expression and the media.

This latest examination of a highly topical issue is grounded firmly and explicitly in a growing body of existing standards adopted by the Council of Europe: Article 10 of the European Convention on Human Rights and relevant case-law; the Committee of Ministers’ Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information (see IRIS 2000-3/2) and Declaration on the protection and promotion of investigative journalism (see IRIS 2007-10/2), as well as PACE Resolution 1729 (2010) and Recommendation 1916 (2010), both entitled, “Protection of ‘whistle-blowers’” (IRIS Extra, pending). It refers to the Council of Europe’s Convention on Cybercrime and the European Union’s Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC. It also welcomes the attentiveness of the Council of Europe Commissioner for Human Rights to media freedom issues generally, while calling for particular attention to the protection of the confidentiality of journalists’ sources in his future activities.

Importantly, the PACE reaffirms that “the confidentiality of journalists’ sources must not be compromised by the increasing technological possibilities for public authorities to control the use by journalists of mobile telecommunication and Internet media” (para. 12). The “interception of correspondence, surveillance of journalists or search and seizure of information” are of central relevance here. Moreover, it stresses that “Internet service providers and telecommunication companies should not be obliged to disclose information which may lead to the identification of journalists’ sources in violation of Article 10 of the Convention”.

The PACE notes that the obligation not to disclose sources when information is received in confidence is often enshrined in journalistic professional/ethical codes of conduct (para. 14). It also notes that ongoing changes in media and communications technologies have facilitated profound changes in the practice of

journalism and the public dissemination of information generally (para. 11). In light of these observations, it states that the “right of journalists not to disclose their sources is a professional privilege, intended to encourage sources to provide important information to journalists that they would not give without a commitment to confidentiality” (para. 15). It then goes on to state that the “same relationship of trust does not exist with regard to non-journalists, such as individuals with their own website or web blog” and that “non-journalists cannot benefit from the right of journalists not to reveal their sources” (para. 15).

The PACE recommends that the Committee of Ministers inter alia call on Member States which have not already done so, to adopt legislative measures to protect the confidentiality of journalistic sources (para. 17.1). It additionally suggests the preparation of relevant guidelines for prosecutors and police and training materials for the judiciary (para. 17.3). It advocates the development of a separate set of guidelines for “public authorities and private service providers concerning the protection of the confidentiality of journalists’ sources in the context of the interception or disclosure of computer data and traffic data of computer networks [...]” (para. 17.4).

“The protection of journalists’ sources”, Recommendation 1950 (2011), Parliamentary Assembly of the Council of Europe, 25 January 2011

<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/EREC1950.htm>

